

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5066 OF 1987

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

J.C. SHIROLAWALA

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

Mr. J.M. Patel, for the Petitioner.

Mr. H.L. Jani, for the Respondents.

Coram: S.K. Keshote,J

Date of decision:9.5.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, a Mamlatdar and A.L.T., Mangrol, District Surat, filed this Special Civil Application, challenging therein, the order annexure 'B' dated 13.4.87 of the respondent, State Government, under which he was ordered to be compulsorily retired from the Government services in the interest of public service.

3. The learned counsel for the petitioner contended that the petitioner has possessed unblemished service record for all the years except only one adversity, i.e., of withholding of one grade increment without future effect has been given. The learned counsel for the petitioner, Shri J.M.Patel further contended that the petitioner has been given promotion to the next higher post of Mamlatdar after that punishment, under the order dated 1st July 1986. That is not the end of the matter, but further under the order dated 6th August 1986, the petitioner was allowed to cross Efficiency Bar at the stage of Rs.615/-. The petitioner has an unblemished service record to his credit in the total service career and as such, the order of compulsory retirement made only on the basis of single adversity cannot be said to be made in public interest. In support of his contention, the learned counsel for the petitioner relied on two decisions of Apex Court, namely, (i) Brijmohan Singh Chopra v. State of Punjab, reported in AIR 1987 SC 948, and (ii) Narasingh Patnaik v. State of Orissa, reported in 1996(3) SCC 619.

4. On the other hand, Shri H.L. Jani, learned counsel for the respondents contended that while passing the order of withholding one grade increment, the disciplinary authority, the Collector, has observed that the integrity of the petitioner cannot be said to be free from doubt. The respondents have, in the reply, come up with the case that the adversity, i.e. the award of punishment of stoppage of one grade increment and the remarks of the Collector regarding integrity of the petitioner was given due weightage by the Committee to form opinion that the petitioner should not be retained in the services in public interest. The learned counsel for the respondents further contended that when the integrity of the petitioner was doubtful, powers under Rule 161 in the present case have rightly been exercised. The fact that the petitioner has been given promotion and he was allowed to cross Efficiency Bar is hardly of any substance in the present case where the integrity of the petitioner was reported to be doubtful.

5. I have given my thoughtful considerations to the

submissions made by the learned counsel for the parties.

6. The facts are not in dispute that after the penalty of withholding of one grade increment without future effect, the petitioner has been given promotion to the next higher post of Mamlatdar and A.L.T. as well as he was allowed to cross Efficiency Bar. But this Court cannot be oblivious of the fact that the petitioner has been chargesheeted in connection with serious charges, though ultimately in the inquiry he has been given only minor penalty. The order dated 3.12.85 is on record and the charges against the petitioner are very serious. There are three charges against the petitioner. The first relates to misappropriation of three bags of rice on 27.2.81 from the Government godown. The second charge pertains to filling of less quantity of rice in bags which were sent from the godown of F.C.I, Vadodara, during 2.2.81 to 6.2.81. The third charge is regarding serious negligence in duty and doubtful integrity in allowing illegal removal of three bags of rice stored in Government godown without permit of competent officer. It is true that the petitioner has been given only minor penalty, but nevertheless, the charges are very serious. The Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of administration or to weed out people who are of doubtful integrity or are corrupt, but sufficient evidence was not available to take disciplinary action in accordance with rules so as to inculcate a sense of discipline in service. The power to compulsorily retire the Government servant is one of the facets of doctrine of pleasure incorporated in Article 310 of the Constitution. The Bombay Civil Service Rules, 1959, provides for compulsory retirement of a Government servant on his completion of certain number of services or attaining the prescribed age. The service record of the Government servant is reviewed at this stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of charge or imputation requiring the explanation from the Government servant. While misconduct and efficiency are facts that are considered when the order is one of dismissal or removal and of premature retirement. There is this difference that while in the case of retirement it merely furnish the background and in case of dismissal or removal the inquiry is held only for the satisfaction of the authorities who have to take the action in the case of dismissal, removal. They form the very basis on which the order is made. A reference in this respect may have to the following decisions of the Hon'ble Supreme Court

in the case of Shyamlal v. State of U.P., reported in AIR 1954 SC 369, and in the case of State of Bombay. Saubhagchand M. Doshi, reported in AIR 1957 SC 892. A Government servant who is prematurely retired does not lose any part of benefit that he has earned during the service. The premature retirement differs both from dismissal and removal as the latter involves penal consequences. However, the premature retirement deprives a Government servant of the chances of serving and getting his pay till he attains the age of superannuation and thereafter get pension. That cannot be regarded in the eye of law as punishment. The premature retirement is not a punishment and does not attract provisions of Article 311. The Apex Court in the series of decisions starting from Shyamlal's case (supra) has held that the premature retirement is neither a punishment nor stigma. It is not the case of the petitioner in the present case that the order of respondents prematurely retiring the petitioner from services is by way of penalty or it casts a stigma or that any stigma is attached to the order. In the case of Brijmohan Singh Chopra v. State of Punjab (supra), on which reliance has been placed by the learned counsel for the petitioner, in para-7 of the said judgment, the Hon'ble Supreme Court observed that, adverse entries, if any awarded to any employee lose their significance on or after his promotion to a higher post. The learned counsel for the petitioner, relying on this decision, contended that the punishment of penalty of withholding of one grade increment lost its significance as the petitioner has been promoted later on. However, the Apex Court, in the case of Brijmohan Singh (supra), observed that public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest. Therefore, the rule contemplates pre-mature retirement of inefficient, corrupt or dead-wood which would subserve public interest. It has further been observed by the Hon'ble Supreme Court in the aforesaid case that even if there was a single entry causing doubt on the integrity of an employee, pre-mature retirement of such an employee would be in the public interest. Now I may make reference to another decision of the Hon'ble Supreme Court on which reliance has been placed by the learned counsel for the petitioner, i.e, in the case of Narasingh Patnaik v. State of Orissa (supra). In this case, the appellant therein was ordered to be compulsorily retired and that order was held to be invalid and the same was quashed by the Apex Court. The facts of the case were that the recommendations of the Review Committee, on the basis of which the order of

compulsory retirement was made by respondent therein, were based on following circumstances:

- (i) There were adverse entries in annual confidential reports of the appellant for the years 1975-76 and 1977-78.
- (ii) A vigilance case has been registered by the Vigilance Department against the appellant for possession of properties disproportionate to his known source of income.
- (iii) The appellant has also been asked to explain the allegation of corruption during his incumbency as Executive Engineer, Balimela Dam Project.
- (iv) Charges have been framed against him for committing irregularities in splitting up the work during his incumbency as Superintending Engineer, Central Irrigation Circle.
- (v) Explanation has also been asked for placing orders with a firm in Calcutta for supply of 20 tarpaulins without following the formalities and without proper tender enquiries during his incumbency as Superintending Engineer, Central Irrigation Circle.
- (vi) Proceedings have also been started against him for taking up work of improvement at an estimated cost of Rs.4,22,565 and for splitting up the contract into two to bring this within the financial limit of his power without obtaining the approval of the Chief Engineer.
- (vii) Explanation has also been called for to explain the charge that as Supt.Er. he committed irregularities in the matter of disposal of 50 m.t. of scrap steel. He submitted his explanation and the matter is pending further inquiry.

The Court has found as a fact that after the remarks were made in the Confidential report for the year 1975-76 and 1977-78, the appellant therein has been promoted on the post of Superintending Engineer in the year 1978, and thereafter as Executive Engineer in the year 1984. It has further been brought on record that the Annual Confidential Report of the appellant for the period prior to 1975-76 and after 1977-78 was 'good'. In this factual

matrix, the Apex Court has held that the adverse remarks in the Annual Confidential Report for the year 1975-76 and 1977-78 by themselves cannot sustain an opinion leading to compulsory retirement of the appellant on the basis that the further retention of the appellant in service was not in public interest. So far as other material is concerned, the Court has observed that in the vigilance case, a final report was submitted by police after completing investigation and the same has been accepted by the Chief Judicial Magistrate, Cuttak. As regards third circumstance it has been submitted by the appellant that after receipt of preliminary explanation and after taking view of the Engineer in Chief, contemplated proceedings were dropped. With regard to circumstance four, after explanation has been submitted by the appellant, no further action was taken and the proceedings were dropped. Similarly the matter referred to in circumstance No.5 was also dropped. As regards circumstance No.6, at which the Review Committee considered the case of the appellant, the order of the Government imposing penalty of withholding of three grade increments had not been intimated to him and that thereafter the appellant had challenged the said order before the Orissa Administrative Tribunal, which petition has been allowed by the Tribunal on 11.12.91 and the order of penalty has been quashed. As regards 7th circumstance, the same has also been dropped. In the aforesaid case, the Apex Court, on the basis of the fact that the appellant therein has been promoted on the post of Superintending Engineer and thereafter to the post of Executive Engineer in 1984 and the Annual Appraisal Reports of the year earlier to that and after that were good, held that the opinion formed on the basis of said material leading to compulsory retirement of the appellant was not in public interest.

7. Three Judges Bench of the Hon'ble Supreme Court in the case of State of Orissa & Ors. v. Ram Chandra Das, reported in AIR 1996 SC 2436, has considered the case where the respondent therein was compulsorily retired and that order has been challenged by him before the Orissa Administrative Tribunal, which came to be quashed and set aside, and the matter has been taken up before the Apex Court by the State Government, wherein the order of the Tribunal has been reversed. The case of the respondent before the Apex Court was that the adverse entries for two years, 1980-81 and 1981-82 and pending departmental proceedings would not be sufficient to compulsorily retire the Government servant on the premises that after promotion, that would become irrelevant and minor penalty was imposed. In that case,

the respondent has also been allowed to cross Efficiency Bar. The Apex Court has observed that crossing of Efficiency Bar enables the Government servant to avail of benefit to draw higher scale of pay after crossing Efficiency Bar. In that case, adverse remarks were made after promotion, but the Court has observed that even otherwise, the remarks form part of service record and character role. The record of inquiry on conduct would also be material. Though minor penalty may be imposed on given facts and circumstances to act of misconduct, nevertheless remains part of the record for overall consideration to retire a Government servant compulsorily. The object is always public interest. The Court has further observed that in such matters, the material question is whether the entire service record was considered or not and it is not for the Court or the Tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take an appropriate decision in that behalf. Merely because promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or the competent officer reach that decision. The Court has further observed that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any, but that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in the service after he attained the required length of service or qualified period of service for pension.

8. The integrity of the petitioner has been found to be doubtful. The charges against the petitioner in the inquiry were relating to misappropriation and as such, it is a case of doubtful integrity of the petitioner. It is true that in the inquiry ultimately the petitioner has been given only minor penalty, but at the same time, disciplinary authority has reported that his integrity is doubtful. The petitioner has been given promotion and he was allowed to cross Efficiency Bar also, but only on this ground, this material evidence on record will not be wiped off as held by the Apex Court in the case of *State of Orissa v. Ram Chandra Das* (supra). Retention of a person whose integrity is doubtful will not be in the public interest. The present case is squarely covered by

the judgment of three Judges' Bench of the Apex Court in the case of State of Orissa v. Ram Chandra Das (supra). In case the order of compulsory retirement of the petitioner in the present case is interfered with and the same is quashed, then this Court will permit an officer to continue in service whose integrity is doubtful, and such decision certainly cannot be said to be in the public interest. The decision of the Review Committee to recommend compulsory retirement of the petitioner in public interest does not suffer from any infirmity or it cannot be said to be perverse. On the basis of the material which was there before the Review Committee, it cannot be said that relying on that state of record, a prudent man could not have reached to the decision to retire the petitioner prematurely from Government services.

9. In the result, this Special Civil Application fails and the same is dismissed. The petitioner is directed to pay Rs.1,000/- by way of costs to the respondents. The learned counsel for the respondents has no objection in case this amount of costs is ordered to be deposited by the petitioner in the officer of the Bar Council of Gujarat at Ahmedabad, in the account of Advocates' Welfare Fund. Order accordingly. The petitioner is directed to deposit Rs.1,000/-, the cost of this petition, in the office of the Bar Council of Gujarat, Ahmedabad, within a period of one month from today and produce on record of this Special Civil Application, receipt of deposit of the said amount. However, it shall be open to the Bar Council of Gujarat, to take appropriate action available in law in case the amount of Rs.1,000/- is not deposited by the petitioner, as ordered by this Court. A copy of this order be sent to the Bar Council of Gujarat, Ahmedabad. Rule discharged.

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